Supreme Court, U. S.
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In the

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-1481

AMERICAN MOTORISTS INSURANCE COMPANY,
Appellant,

v.

VIRGIL B. STARNES,
Appellee.

BRIEF FOR APPELLEE

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APPELLEE'S BRIEF

TO THE HONORABLE SUPREME COURT OF THE UNITED STATES OF AMERICA:

OPINION

The Opinion of the Court of Civil Appeals of Texas, Tenth Supreme Judicial District, appears in Appendix A to Appellant's Jurisdictional Statement at Page A-1.

JURISDICTION

Appellant alleges that jurisdiction lies with this Honorable Court under Title 28, U.S.C. Section 1257 (2). As heretofore stated in Appellant's Motion to Dismiss, the Texas Venue Statute is not repugnant to the Constitution, Treaties, or Laws of the United States and does not violate the "Equal

Protection Clause" of the 14th Amendment to the Constitution of the United States.

CONSTITUTIONAL PROVISION AND STATUTES INVOLVED

The Constitutional Provision and the Texas Statute involved are fully set forth in Appellant's Brief (pp 2-3).

QUESTION PRESENTED

Where there is a substantially common ground for venue for foreign and domestic corporations, can the foreign corporation validly complain of a denial of equal protection of the laws merely because an additional burden is imposed on the domestic corporation by subjecting the domestic corporation to an additional ground of venue.

STATEMENT OF THE CASE

Appellant's Statement of the case is substantially correct.

SUMMARY OF ARGUMENT AND ARGUMENT

The only "Valuable Right" held by the Texas Courts to exist pertaining to venue is that of a defendant to be sued in the county of his residence, subject to certain exceptions. The nearest thing to a "residence" as to a corporation is its principal office, the same being where its books are kept, its stock-holders' meetings are held, its primary officers function and its directors and officers assemble to transact important general business of the company. Thus, it is possible to accord said "Valuable Right" to a domestic corporation but it is impossible to accord such right to a foreign corporation since its principal office, including all of its primary officers, are headquartered out of state. Under the Texas Venue Statute, Article 1995, V.A.C.S., a domestic corporation is suable at its principal office without proof of any cause of action or any other additional venue fact. A foreign corporation's nearest equivalent in Texas to a domestic corporation's "principal office" is obviously those places where the foreign corporation has a fixed agency of a permanent nature in Texas. Thus, by making domestic corporations suable in the

county of their principal office and foreign corporations suable in the county where they maintain a fixed agency of a permanent nature, without any other additional proof as to either, Texas has treated said corporations with the greatest equality possible under the circumstances existing. Texas has construed the term "agency or representative" under the Venue Statute as to foreign corporations to require a place of business of a fixed and permanent nature, *Vines v. Harry Newton. Inc.*, 445 S.W. 2d 260. The fact that Article 1995 went farther and also provided that a domestic corporation could further be sued in the county where the plaintiff resides at the time of the cause of action if there is also a corporate agency in said county or the county nearest to plaintiff's residence at the time of the cause of action where such agency exists, does not give a foreign corporation any ground for complaint — the domestic corporation is the only one that could complain about this additional venue site being imposed upon it. The law is aptly stated in *Allied Stores of Ohio, Inc. v. Bowers*, 358 U.S. 522, 79 S. Ct. 437, 3 L. Ed. 2d 480, as follows:

> "If the selection or classification is neither capricious nor arbitrary, and rests upon some reasonable consideration of difference or policy, there is no denial of the equal protection of the law."

CONCLUSION

The Judgment of the Court below should be affirmed and it is accordingly so prayed.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of December, 1975, three copies of the foregoing Brief for Appellee were mailed, postage prepaid, to Joel W. Westbrook, Attorney at Law, 1910 National Bank of Commerce Building, San Antonio, Texas 78205, Attorneys for Appellant. I further certify that all parties required to be served have been served.

Fred Horner

Fred Horner